

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____



Hugh McDonald
SECRETARY OF COMMERCE

Alan McClain
COMMISSIONER,
ARKANSAS INSURANCE
DEPARTMENT

September 5, 2024

Honorable John Thurston
Arkansas Secretary of State
State Capitol Building
Little Rock, AR 72201
Attn. Arkansas Register

sent via email: register@sos.arkansas.gov

Re: Proposed Rule 128 "Fair and Reasonable Pharmacy Reimbursements"

Dear Secretary:

The Arkansas Insurance Department has scheduled a public hearing as to Proposed Rule 128 "Fair and Reasonable Pharmacy Reimbursements." Enclosed are the DOI Notices of Public Hearing and a copy of the proposed rule.

Please arrange to publish the information in a format acceptable to the Secretary for at least 30 days in advance. Can you send us confirmation that we can use in the transcript as a public hearing exhibit?

An electronic filing will be made within the statutorily required 7 days. Thanks for your help.

Thank you,

Clara D. Mezza

Clara D. Mezza
Administrative Analyst
Legal Division
Arkansas Insurance Department
clara.mezza@arkansas.gov
501-683-3497

Enclosures

RULE 128 MARKUP

FAIR AND REASONABLE PHARMACY REIMBURSEMENTS

I. AUTHORITY

II. DEFINITIONS

III. APPLICABILITY

IV. FAIR AND REASONABLE REIMBURSEMENTS

V. VIOLATIONS

VI. EFFECTIVE DATE

I. AUTHORITY

This Rule is issued by the Arkansas Insurance Commissioner ("Commissioner") under Ark. Code Ann. § 23-92-509(a)(2)(I), § 23-92-509(a)(2)(D) and § 23-92-509(b)(2)(A). Specifically, under the permissive rule authority of these code provisions, the Commissioner is authorized to adopt rules without limitation to implement the Arkansas Pharmacy Benefits Manager Licensure Act ("PBMLA") for compensation and pharmacy benefits manager network adequacy.

II. DEFINITIONS

Unless otherwise defined in this Section, the definitions in the PBMLA shall apply to the provisions in this Rule.

A. "Fair and reasonable cost to dispense" shall mean the Arkansas Insurance Commissioner's determination of an adequate price or amount for the dispensing of a drug by a pharmacy giving due regard for the cost factors of labor, supplies and other administrative costs of a pharmacy associated with the dispensing of a drug to a subscriber of a health benefit plan.

B. "Subscriber" shall mean an insured, enrollee or certificate holder of a health benefit plan as defined under Ark. Code Ann. § 23-92-503(2).

III. APPLICABILITY

This Rule applies to all health benefit plans as defined in Ark. Code Ann. § 23-92-503(2) and healthcare payors as defined in Ark. Code Ann. § 23-92-503(3).

IV. FAIR AND REASONABLE REIMBURSEMENTS

A. Pursuant to Ark. Code Ann. § 23-92-506(a)(1), the Commissioner may review and approve the compensation program of a pharmacy benefits manager ("PBM") from a health benefit plan to ensure that the reimbursement for pharmacist services paid to a pharmacist or pharmacy is fair and reasonable to provide an adequate pharmacy benefits manager network for a health benefit plan. The provisions of this Rule are specifically issued related to cost processes, and not plan benefit design, to help ensure the subject of network adequacy or reasonably sustainable network adequacy of pharmacy services for health benefit plans.

B. The Commissioner finds that current pharmacy reimbursement minimums under the PBMLA, or payments within a close range to minimums of National Average Drug Acquisition Cost ("NADAC"), or maximum allowable cost ("MAC"), that do not also include a reasonable cost to dispense to pharmacies impairs the sustainability of network adequacy for pharmacy services for health benefit plans.

C. To ensure an adequate network of pharmacy services for a health benefit plan, or to ensure a reasonably sustainable adequate network for such services, a health benefit plan, through its pharmacy benefits plan or program, shall include a fair and reasonable cost to dispense to pharmacies in its administration of drug benefits under its health benefit plan. A fair and reasonable cost to dispense shall be calculated commiserate with the time, labor, supplies, and other administrative costs associated with the dispensing of the drug by the pharmacy. This cost to dispense shall be uniform or equally applied to all pharmacies servicing the health benefit plan. No health insurer, and no pharmacy benefits manager ("PBM") administering drug benefits for health benefit plans shall recoup or recover any increased costs to dispense from a subscriber at the point of sale through increased cost-sharing requirement ratios or percentages ("co-insurance, co-payment, or deductibles") on the health benefits plan member. Every health insurer shall file with the Commissioner, no later than by January 1, 2025, a written report describing each healthcare payor's calculation amount, and methodology for such calculation, of the cost to dispense as required by this Rule. This requirement shall apply to plan year 2025 and thereafter on March 1 for each succeeding plan year. The Commissioner shall be authorized to review, approve or deny such cost to dispense calculation, in consultation with the actuary for the Arkansas Insurance Department ("AID"). The Commissioner shall make his or her decision to approve or deny such cost calculation within twenty (20) working days of receipt of such report from a healthcare

payor and notify the submitting healthcare payor of his or her decision in writing. The Commissioner shall issue a bulletin more specifically addressing the format and information requirements required for such submissions as required under this Section of this Rule.

E. The Commissioner requests that the health benefit plans and healthcare payors strive to reduce any additional costs, associated with the costs to dispense as required by this Rule, by applying all unused brand name rebates to such costs, remaining after compliance with Act 333 of 2023 under the Healthcare Insurer Share the Savings Act, codified at Ark. Code Ann. § 23-79-2501 et seq., and the Pharmacy Benefits Manager Share the Savings Act, codified at Ark. Code Ann. § 23-92-704 et seq.

V. VIOLATIONS

Violations of any provision of this Rule shall be subject to the fine or penalty of \$5,000.00 per violation, and repeated violations by a healthcare payor or PBM of this Rule may result in the suspension or revocation of its license under Ark. Code Ann. § 23-66-210(a)(2).

VI. EFFECTIVE DATE

This Rule is effective after review and approval by the Arkansas Legislative Council, ten (10) days after filing of the approved Rule with the Arkansas Secretary of State.

ALAN MCCLAIN

INSURANCE COMMISSIONER

DATE

RULE 128

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- II. DEFINITIONS**
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ALAN MCCLAIN

INSURANCE COMMISSIONER

DATE



Hugh McDonald
SECRETARY OF COMMERCE

Alan McClain
COMMISSIONER,
ARKANSAS INSURANCE
DEPARTMENT

DATE: SEPTEMBER 5, 2024

TO: PHARMACY BENEFITS MANAGERS, HEALTH INSURERS, HEALTH MAINTENANCE ORGANIZATIONS, HOSPITAL PUBLIC SERVICE CORPORATIONS, HEALTHCARE PAYORS, AND OTHER INTERESTED PARTIES

FROM: ARKANSAS INSURANCE DEPARTMENT

SUBJECT: PROPOSED RULE 128: FAIR AND REASONABLE PHARMACY REIMBURSEMENTS

NOTICE OF PUBLIC HEARING

The Arkansas Insurance Department ("AID") will host a Public Hearing on October 22, 2024 at 10 AM, in the Second Floor Riverview Hearing Room, in the Arkansas Department of Commerce Building, One Commerce Way, Little Rock, Arkansas 72202.

The Arkansas Insurance Commissioner is considering adopting proposed Rule 128: Fair and Reasonable Pharmacy Reimbursements, to address fair and reasonable rates for pharmacy reimbursements by health insurance plans.

All interested persons are encouraged to attend the Public Hearing and may appear and present, orally or in writing, any statements, arguments, or opinions on the proposed Rule 128. Any written or oral comments will be accepted from now until 4:30 pm, November 11, 2024. The Legal Division requests that persons desiring to testify at the hearing notify the Legal Division as soon as possible and submit intended statements in writing in advance of the hearing.

The proposed Rule 128 may be viewed on the Legal Division's website at <https://insurance.arkansas.gov/industry-regulation/legal/proposed-rules/>. Please direct your inquiries to the Legal Division at (501) 371-2820 or to insurance.legal@arkansas.gov.